

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COMAIR LIMITED,

Plaintiff,

v.

THE BOEING COMPANY, A DELAWARE  
CORPORATION,

Defendant.

CASE NO. 2:23-cv-00176-RSM

**STIPULATED PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material to the extent it is produced or exchanged shall include the

1 following information, documents and tangible things (regardless of the medium or manner in  
2 which it is generated, stored, or maintained): (a) information prohibited from disclosure by statute;  
3 (b) non-public information about Boeing airplane sales and servicing contracts; (c) non-public  
4 information about the design, manufacturing, certification, marketing, sale, delivery, and  
5 performance of Boeing airplanes; (d) non-public information about revenue, pricing, profitability,  
6 or competition-sensitive material; and (e) non-public personal information of individuals,  
7 including medical information, tax information, and personnel records. The identification of any  
8 of the aforementioned types of information shall not be construed as an admission or concession  
9 that such information is relevant to or otherwise subject to discovery.

10 3. “HIGHLY CONFIDENTIAL” MATERIAL

11 “Highly Confidential” material to the extent it is produced or exchanged shall be used to  
12 mean information, documents and tangible things (regardless of the medium or manner in which  
13 it is generated, stored, or maintained) containing information that the producing party reasonably  
14 believes to be so highly sensitive that it could cause it significant competitive harm if revealed  
15 beyond the universe of people entitled to see “Confidential” material. Highly Confidential  
16 material includes highly sensitive strategic corporate information related to financial or pricing  
17 information, or information about confidential third-party agreements, revenue, profit, or loss  
18 information. Highly Confidential material shall not include any information that has been made  
19 public or that it is legitimately subject to public disclosure.

20 4. “EXPORT CONTROLLED MATERIAL”

21 “Export Controlled Material” to the extent it is produced or exchanged shall include  
22 information, technical data, and/or technology that is subject to the requirements of the Export  
23 Administration Regulations (“EAR”), 15 C.F.R. §§ 730.1, *et seq.* and/or the International Traffic  
24 in Arms Regulations, which implement the Arms Export Control Act (“ITAR”), 22 CFR §§ 120.1  
25 *et seq.* Export Controlled Material may or may not also include Confidential Material.  
26 Information subject to the EAR and ITAR shall at all times remain Export Controlled Material

1 regardless of whether such designation is made, in accordance with federal law. Such material  
2 shall be marked clearly as “EXPORT CONTROLLED MATERIAL.”<sup>1</sup>

3 5. SCOPE

4 The protections conferred by this agreement cover not only Designated Material but also  
5 (1) any information copied or extracted from Designated Material; (2) all copies, excerpts,  
6 summaries, or compilations of Designated Material; and (3) any testimony, conversations, or  
7 presentations by parties or their counsel that might reveal Designated Material.

8 However, the protections conferred by this agreement do not cover information that is in  
9 the public domain or becomes part of the public domain through trial or otherwise. This Order  
10 shall not abrogate or diminish any contractual, statutory, or other legal privilege, obligation, or  
11 right of any party or person, nor obligate any party or person to provide any discovery to which it  
12 asserts objections.

13 6. ACCESS TO AND USE OF DESIGNATED MATERIAL

14 6.1 Basic Principles. A receiving party may use Designated Material that is disclosed  
15 or produced by another party or by a non-party in connection with this case only for prosecuting,  
16 defending, or attempting to settle this litigation. Designated Material may be disclosed only to the  
17 categories of persons and under the conditions described in this agreement. Designated Material  
18 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
19 that access is limited to the persons authorized under this agreement.

20 6.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
21 by the court or permitted in writing by the designating party, a receiving party may disclose any  
22 “Confidential” material only to:

23 (a) the receiving party’s counsel of record in this action, as well as employees  
24

---

25 <sup>1</sup> Information designated as Confidential, Highly Confidential, Export Controlled Material, or ITAR-Controlled  
26 Material are together referred to as “Designated Material.”

1 of counsel to whom it is reasonably necessary to disclose the information for this litigation and  
2 who have been informed of their obligations hereunder;

3 (b) the officers, directors, or employees (including in-house counsel and  
4 outside counsel) of the receiving party to whom disclosure is reasonably necessary for this  
5 litigation and who have been informed of their obligations hereunder;

6 (c) experts and consultants to whom disclosure is reasonably necessary for this  
7 litigation, and/or Comair's liquidators, provided that they sign the attached "Acknowledgment and  
8 Agreement to Be Bound" (Exhibit A-1);

9 (d) the court, court personnel, court reporters and any mediators retained in this  
10 action, including their respective staff;

11 (e) copy, imaging, or e-discovery services employees retained by counsel to  
12 assist in the duplication or processing of confidential material, provided that counsel for the party  
13 retaining the service instructs the service not to disclose any Confidential material to third parties,  
14 store any such materials using the same level of care and data security it applies to its own  
15 Confidential information, and to immediately return all originals and copies of any Confidential  
16 material once possession is no longer necessary to perform the service;

17 (f) during their depositions, witnesses in the action to whom disclosure is  
18 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
19 (Exhibit A-1), unless otherwise agreed by the designating party or ordered by the court. Pages of  
20 transcribed deposition testimony or exhibits to depositions that reveal Confidential material must  
21 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
22 under this agreement;

23 (g) the author or recipient of a document containing the information;

24 (h) custodian or other person who otherwise possessed or knew the  
25 information independent of this litigation;

26 (i) any mock juror or professional mock jury provider retained by any of the

1 parties to this litigation and who has signed the “Acknowledgment and Agreement to Be Bound”  
2 (Exhibit A-1); and

3 (j) any other person as to whom the designating party first agrees in writing  
4 and who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A-1).

5 6.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless  
6 otherwise ordered by the court or permitted in writing by the designating party, a receiving party  
7 may disclose any “Highly Confidential” material only to the persons identified in paragraphs  
8 7.2(a), (b), (c), (d), (e), (f), (g), (h) and (j) who have signed the “Acknowledgment and Agreement  
9 to Be Bound” (Exhibit A); provided however that “Highly Confidential” material shall not be  
10 disclosed to the receiving party’s officers, directors, employees or agents, or to Comair’s  
11 liquidators (except for in-house and outside litigation counsel employed by the receiving party  
12 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A-1);

13 6.4 Handling of Export Controlled Material. Each Party has the responsibility to ensure  
14 that Export Controlled Material in its possession, custody or control is not made public nor  
15 otherwise “exported” (as that term is described in 15 C.F.R. § 734.13 or 22 C.F.R. § 120.17) except  
16 as permitted by law and regulations. To accomplish this, the following procedures shall apply to  
17 all EAR-Controlled Material and ITAR-Controlled Material produced in this matter:

18 (a) The producing party shall ensure that any document containing Export  
19 Controlled Material is marked as such in good faith.

20 (b) A receiving party shall ensure that initial receipt and storage of all produced  
21 documents are limited to U.S. Persons in the United States. If a receiving party then wishes to  
22 export produced documents, they may do so only in accordance with federal law and regulations.  
23 To the extent a license from the U.S. Department of State is required to export documents, the  
24 receiving party is solely responsible for obtaining such a license.

25 (c) If the receiving party is uncertain whether or what portion of a document  
26 the designating party contends contains Export Controlled Material, the parties shall meet and

1 confer in attempt to resolve the uncertainty in good faith. Prior to or during the meet-and-confer,  
2 the receiving party shall explain its uncertainty and, in response, the designating party will clarify  
3 the basis for the designation and identify the information it contends is Export Controlled Material.  
4 If after the conference the matter remains disputed, the designating party has the burden in any  
5 challenge proceeding.

6 (d) Notwithstanding such efforts to resolve the uncertainty, each party remains  
7 solely responsible for its own compliance with applicable law and regulations.

8 (e) No person who is not lawfully able to review Export Controlled Material  
9 shall be permitted to review Export Controlled Material.

10 6.5 Filing Designated Material. Before filing Designated Material or discussing or  
11 referencing such material in court filings, the filing party shall confer with the designating party,  
12 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
13 remove the designation, whether the document can be redacted, or whether a motion to seal or  
14 stipulation and proposed order is warranted. During the meet and confer process, the designating  
15 party must identify the basis for sealing the specific Designated Material at issue, and the filing  
16 party shall include this basis in its motion to seal, along with any objection to sealing the  
17 information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
18 standards that will be applied when a party seeks permission from the court to file material under  
19 seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
20 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
21 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
22 the strong presumption of public access to the Court's files.

23 7. DESIGNATING PROTECTED MATERIAL

24 7.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
25 or non-party that designates information or items for protection under this agreement must take  
26 care to limit any such designation to specific material that qualifies under the appropriate

standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

**7.2 Manner and Timing of Designations.** Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 8.2(b) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) **Information in documentary form:** (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the appropriate designation to Designated Material using its established e-discovery process, or, if the material is not electronically stored information or otherwise in electronic form, clearly marked to identify it as Designated Material.

(b) **Testimony given in deposition or in other pretrial proceedings:** the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within forty-five (45) days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as Designated Material. If a party or non-party desires to protect

1 Designated Material at trial, the issue should be addressed during the pre-trial conference.

2 (c) Other tangible items: the producing party must affix in a prominent place  
3 on the exterior of the container or containers in which the information or item is stored the  
4 appropriate designation to identify Designated Material. If only a portion or portions of the  
5 information or item warrant protection, the producing party, to the extent practicable, shall identify  
6 the protected portion(s).

7 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
8 designate qualified information or items does not, standing alone, waive the designating party's  
9 right to secure protection under this agreement for such material. Upon timely correction of a  
10 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
11 in accordance with the provisions of this agreement.

12 8. CHALLENGING DESIGNATIONS

13 8.1 Timing of Challenges. Any party or non-party may challenge the designation of  
14 Designated Material at any time. Unless a prompt challenge to a designating party's designation  
15 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a  
16 significant disruption or delay of the litigation, a party does not waive its right to challenge a  
17 designation by electing not to mount a challenge promptly after the original designation is  
18 disclosed. The parties must use all reasonable efforts to make challenges to designations at least  
19 30 days prior to the trial date.

20 8.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
21 regarding designations without court involvement. Any motion regarding designations or for a  
22 protective order must include a certification, in the motion or in a declaration or affidavit, that the  
23 movant has engaged in a good faith meet and confer conference with other affected parties in an  
24 effort to resolve the dispute without court action. The certification must list the date, manner, and  
25 participants to the conference. A good faith effort to confer requires a face-to-face meeting or a  
26 telephone conference.

8.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party must file and serve a motion to maintain the Designated Material under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable) within 14 days following the conclusion of the parties' meet and confer efforts. The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges or refusals to withdraw and/or those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging and/or designating party to sanctions. All parties shall continue to maintain the material in question as required by this agreement until the court rules on the challenge.

9. DESIGNATED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any Designated Material that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Designated Material may be affected.

10. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Designated Material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Designated Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this

1 agreement, and (d) request that such person or persons execute the “Acknowledgment and  
2 Agreement to Be Bound” that is attached hereto as Exhibit A-1. The unauthorized disclosure of  
3 Designated Material does not alter the status of the protected material or limit the rights or remedies  
4 of the designating party.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
6 MATERIAL

7 When a producing party gives notice to receiving parties that certain inadvertently  
8 produced material is subject to a claim of privilege or other protection, the obligations of the  
9 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Within fourteen  
10 business days of providing notice, the producing party shall provide privilege log entry/entries  
11 covering such inadvertently produced material. Nothing in this paragraph or order curtails a  
12 party’s right to challenge the propriety of a designation or privilege assertion with the Court, or to  
13 assert that the holder of the privilege failed to take reasonable steps to prevent disclosure or failed  
14 to promptly take reasonable steps to rectify the error. This provision is not intended to modify  
15 whatever procedure may be established in an e-discovery order or agreement that provides for  
16 production without prior privilege review. The parties agree to the entry of a non-waiver order  
17 under Fed. R. Evid. 502(d) as set forth herein.

18 12. NON TERMINATION AND RETURN OF DOCUMENTS

19 Within 90 days after the termination of this action, including all appeals, each receiving  
20 party must certify destruction of all Designated Material to the producing party, including all  
21 copies, extracts and summaries thereof.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
25 product, even if such materials contain Designated Material. Counsel may also retain internal work  
26 product or email correspondence that may discuss, summarize, or attach Designed Materials, under

1 the express understanding that any such materials may not be used for any other purpose and the  
2 obligations of confidentiality imposed by this Order remain.

3 The confidentiality obligations imposed by this agreement shall remain in effect until a  
4 designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: December 27, 2023

/s/ Kristy Schlesinger

Hunter K. Ahern  
WA Bar No. 54489  
701 Fifth Avenue, Suite 6800  
Seattle, WA 98104-7066  
Telephone: (206) 344-7600  
Facsimile: (206) 344-3113  
haharn@shb.com

Marc P. Miles (admitted *pro hac vice*)  
Kristy A. Schlesinger (admitted *pro hac vice*)  
5 Park Plaza Suite 1600  
Irvine, California 92614  
Telephone: (949) 475-1500  
Facsimile: (949) 475-0016  
mmiles@shb.com  
kschlesinger@shb.com

*Attorneys for Plaintiff Comair Limited*

DATED: December 27, 2023

/s/ Ulrike Connelly

Ulrike B. Connelly, Bar No. 42478  
**Perkins Coie LLP**  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
Telephone: 206.359.8000  
Facsimile: 206.359.9000  
UConnelly@perkinscoie.com

Michael B. Slade (admitted *pro hac vice*)  
Casey McGushin (admitted *pro hac vice*)  
**Kirkland & Ellis LLP**  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: 312.862.2000  
Facsimile: 312.862.2200  
Michael.slade@kirkland.com  
Casey.mcgushin@kirkland.com

*Attorneys for Defendant the Boeing Company*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents, electronically stored information (ESI) or information, whether inadvertent or  
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or  
5 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
6 documents, including the attorney-client privilege, attorney work-product protection, or any other  
7 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum  
8 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.  
9 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review  
10 of documents, ESI or information (including metadata) for relevance, responsiveness and/or  
11 segregation of privileged and/or protected information before production. Information produced  
12 in discovery that is protected as privileged or work product shall be immediately returned to the  
13 producing party.

14  
15 DATED: January 3, 2024

16  
17 

18 RICARDO S. MARTINEZ  
19 UNITED STATES DISTRICT JUDGE  
20  
21  
22  
23  
24  
25  
26

EXHIBIT A-1ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on [date] in the  
case of Comair Limited v. The Boeing Company (Case No. 2:23-cv-00176-RSM ). I agree to  
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand  
and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
item that is subject to this Stipulated Protective Order to any person or entity except in strict  
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_